

**Chapter 19.92**  
**BOARD OF ADJUSTMENT**

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**19.92.010 Purpose.**

The city's board of adjustment ("board") shall act as an appeal authority for the city as specified in this title, and may authorize in specific cases variance from the terms of this title as provided herein. The board shall provide for fair and just treatment in the administration of local zoning ordinances to insure that substantial justice is done.

**19.92.020 Appointment.**

The board shall consist of five members and one or more alternate members, who shall be appointed by the manager, with the advice and consent of the city council, for a term of five years, provided that the manager shall appoint members of the first board to terms so that the term of one member expires each year. No member of the board shall also serve as a member of the planning commission or city council. No member of the board shall serve more than two consecutive terms.

**19.92.030 Compensation.**

Each regular member of the board shall receive \$25 per meeting as compensation and as reimbursement for expenses incurred in the performance of their official duties, provided, however, that such compensation and

reimbursement not exceed \$100 per month. An alternate member of the board shall receive \$25 per meeting at which the attendance of the alternate member is requested by the chairperson of the board.

**19.92.040 Removal and vacancies.**

Members of the board may be removed for cause by the manager upon written charges and after public hearing (if a public hearing is requested by the member being removed). Any vacancy occurring on the board shall be promptly filled by the manager with the advice and consent of the city council for the unexpired term of the member whose office is vacant.

**19.92.050 Organization of board.**

The board shall organize and elect a chairperson and adopt rules that comply with any and all ordinances adopted by the city council. Such rules shall establish procedures for alternate members to serve in the absence of members of the board and shall provide that no more than two alternate members may sit at any meeting of the board.

**19.92.060 Meetings and voting.**

Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Any regular member who cannot attend a meeting shall so notify the chair and the chair shall request that an alternate member fill the vacancy at such meeting. The chairperson, or in his absence, the vice-chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member on each question, or if absent, or failing to vote, indicating such fact, and shall keep records of its

examinations and other official actions all of which shall be immediately filed in the offices of the board and shall be a public record.

The concurring vote of three members of the board is necessary to reverse any order, requirement, decision, or determination by the planning commission or any administrative official or agency or to decide in favor of any appellant.

#### **19.92.070 Powers and duties of board.**

The board shall have the following powers:

A. Variances. To authorize in specific cases variance from the terms of this title. The board may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district;

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and,

5. The spirit of the zoning ordinance is observed and substantial justice is done.

In determining whether enforcement of the zoning ordinance will cause unreasonable hardship, the board may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought and comes from

circumstances particular to the property, not from conditions which are general to the neighborhood. In determining whether or not enforcement of the zoning ordinance would cause an unreasonable hardship, the board may not find an unreasonable hardship if the hardship is self-imposed or economic. In determining whether or not there are special circumstances attached to the property, the board may find that special circumstances exist only if special circumstances relate to the hardship complained of and deprive the property of the privileges granted to other properties in the same district. The applicant shall bear the burden of proving that all the conditions justifying a variance have been met. In granting a variance, the board may impose additional requirements on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified.

B. Appeals. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official or the planning commission in the enforcement or interpretation of this title or of any ordinance adopted pursuant thereto. Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance.

C. The board of adjustment shall be the review board for applications to amend, modify, expand, nonconforming uses pursuant to section 19.88.070.

#### **19.92.080 Appeals.**

A. If the board is authorized by this code to hear and decide appeals of planning commission decisions, then the board shall review the record of the

planning commission decision to determine whether the decision is supported by substantial evidence in the record and therefore not so unreasonable as to be arbitrary and capricious.

B. If the board is authorized by this code to hear and decide appeals of city administrative officials, then the board shall make a *de novo* review of any such issue.

C. Appeals to the board are barred unless such appeal is filed within 30 days after the date of the decision (by the administrative official or the planning commission) being appealed.

D. Any persons directly aggrieved by any decision of the board may petition the District Court for review of the decision if authorized by state statute, provided that such appeal shall be filed with the District Court within 30 days after the date of the board's decision being appealed.